

UNITED STATES DISTRICT COURT

for the
Northern District of New York

UNITED STATES OF AMERICA)

v.)

DANIEL M. PASSERO, JR.)

Case No. 5:18-mj-19 (ATB)

Defendant)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the date(s) of December 2015 through January 16, 2016, in the county of Herkimer in the Northern District of New York the defendant violated:

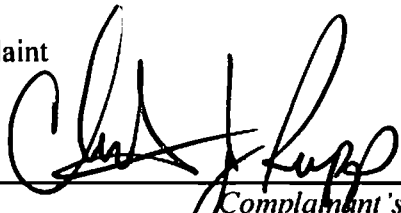
*Code Section*18 U.S.C. §§ 2252A(a)(2)(A) &
2256(8)(A)*Offense Description*

Receipt of Child Pornography

This criminal complaint is based on these facts:
See attached Affidavit in Support of Criminal Complaint

☒ Continued on the attached sheet.

Attested to by the Applicant in Accordance with
the Requirements of Rule 4.1 of the Federal
Rules of Criminal Procedure.


Complainant's signature

Christopher J. Rupp, Special Agent, HSI

Printed name and title

Sworn to before me and signed in my presence.

Date: 1/11/2018

*Judge's signature*City and State: Syracuse, NY

Hon. Andrew T. Baxter, U.S. Magistrate Judge

Printed name and title

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Christopher J. Rupp, being duly sworn, depose and state:

INTRODUCTION

1. I am a Special Agent with Homeland Security Investigations (HSI) within the Department of Homeland Security, assigned to the Resident Agent Office in Alexandria Bay, New York and have been so employed since 2004. As part of my daily duties as an HSI Special Agent, I investigate crimes involving child exploitation and child pornography, including violations pertaining to the production, distribution, transportation, receipt, and possession of child pornography in violation of Title 18, United States Code, Sections 2252 and 2252A. I have received specialized training in the area of child pornography and child exploitation and have had the opportunity to observe and review numerous examples of child pornography in various forms of media, including computer media. I have also been involved in the execution of numerous child exploitation search warrants, as well as, being the affiant for search warrants relating to the possession, receipt and distribution of child exploitative material concerning the internet, computers, smartphones, electronic devices and their associated media storage components.

2. This affidavit is made in support of an application for a criminal complaint charging Daniel M. PASSERO, Jr. with violations of Title 18, United States Code, Sections 2252A(a)(2)(A) and 2256(8)(A) (receipt of child pornography).

BASIS OF INFORMATION

3. The information contained in this affidavit is based upon my investigation of this matter and on information provided by other law enforcement agents. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that PASSERO knowingly received child pornography using a means and facility of interstate and foreign commerce, and in and affecting such commerce, from in or around December 2015 through in or around January 2016, in Herkimer County in the Northern District of New York, in violation of 18 U.S.C. §§ 2252A(a)(2)(A) & 2256(8)(A).

OVERVIEW OF INVESTIGATION

4. On January 19, 2016, an individual identified as C.M. contacted New York State Probation Officer (PO) Lucenti concerning PASSERO, who was on parole and was residing with C.M. at 485 Frog City Road, Fort Plain, New York. According to C.M., a family member identified as A.M. found an LG cellular phone in a bathroom of the residence they shared with PASSERO. Upon finding the cellular phone, A.M. notified family member S.M., who also lived at the residence. S.M. examined the phone and indicated that he believed it was a phone belonging to him that had gone missing some months previously. S.M. further examined the phone to ensure it was in fact the missing/stolen phone, and in doing so, he found child exploitative images on the phone and upon seeing the images S.M. turned the phone over to C.M., who confronted PASSERO about the phone. PASSERO admitted to

C.M. that he took/stole the phone from S.M. some months earlier and that he (PASSERO) had been using the phone to access the internet and view child pornography on the phone.

5. The terms of PASSERO's parole prohibited PASSERO from owning, using or possessing a computer/communication device or internet capable device without permission of his parole officer. As such, PASSERO's possession and use of the phone violated the terms of his parole. C.M. contacted PO Lucenti, who supervised PASSERO, and C.M. advised PO Lucenti of the situation involving PASSERO and the LG cellular phone. PO Lucenti advised C.M. he would visit the residence, which he did later that day in the company of an officer from the New York State Police.

6. Upon arrival at the residence, PO Lucenti spoke with PASSERO, who admitted to taking the phone from S.M. and using the phone to access the internet to obtain child exploitative material/child pornography. PO Lucenti also spoke with C.M. and S.M, and he took possession of the cellular phone associated with PASSERO. PO Lucenti, with consent from S.M. (the owner of the phone), examined the cellular phone and observed images of child exploitative material. Based upon the aforementioned events and admissions from PASSERO, PO Lucenti took PASSERO into custody for violating his parole.

7. Following his arrest, PASSERO gave a written and signed statement to New York State Police Investigator Spato in which PASSERO admitted to taking a cellular phone from S.M., accessing the internet with the phone,

“Googling”/searching for images of young girls online, and downloading from the internet images of young girls involved in sexual acts.

8. On or about March 10, 2016, the New York State Police, Computer Crimes Unit completed a forensic analysis of the LG cellular smart phone which PASSERO possessed on January 19, 2016. In summary, the forensic report disclosed that the LG phone possessed by PASSERO contained more than three hundred images of children. These images can be roughly categorized as follows: approximately 148 of the images appear to be child exploitative images, approximately 72 of the images appear to be pre-pubescent exploitative images, and approximately 148 of the images appear to be child erotica. The forensic analysis of the LG cellular smart phone PASSERO possessed has led agents and investigators to conclude that PASSERO, at a minimum, used the phone on various dates in December 2015 and January 2016 to access child exploitative images.

9. Your affiant has reviewed the results of the forensics examination and has viewed many of the images found on PASSERO’s LG cellular phone. Three such images of child exploitative material found on PASSERO’s phone are described hereafter:

- **Image Report Number:** 230; **File:** A3XmsZk.jpg.; **File Path:** /MEDIA1/Pictures/Downloads/A3XmsZk.jpg; **Created Date:** 12/25/2015.

This image shows an underage age female, who appears to be under the age of 12, unclothed and her genitalia is not developed (pre-pubescent). The female is lying on her back with her legs pulled up towards her head/shoulders, which exposes her genitalia to the camera and is the focus of the camera.

Additionally, in the foreground of the photograph is head of a circumcised penis.

- **Image Report Number:** 232; **File:** AiCUC9iaYE.jpg; **File Path:** /MEDIA1/Android/Download/AjYizuuZsg.jpg; **Created Date:** 12/27/2015.

This image is of a young female who appears to be underage performing oral sex on an adult male penis. The female is shown with her mouth open and her tongue extended touching a penis. The underage female has two of her right hand fingers touching the male penis. The female appears to be under 12 years of age. The image is taken of the female from the neck up.

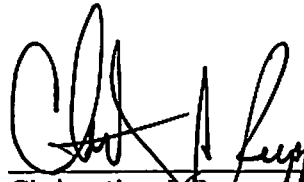
- **Image Report Number:** 267; **File Name:** HiXFtAF.jpg; **File Path:** /MEDIA1/Pictures/Download/HiXFtAF.jpg; **Created Date:** 12/25/2015. This image shows a young female, who appears to be under 12 years of age. The female is lying on her back and is unclothed from the waist down. An unclothed adult male with an erect penis is shown straddling the female. The female has her right four fingers on the top of the male's erect penis and her left thumb appears to be touching the underside of the male's penis.

These and all of the other images from the LG cellular phone possessed/stolen by PASSERO, as well as the forensic analysis described above, are available for this Court's review upon request.

CONCLUSION

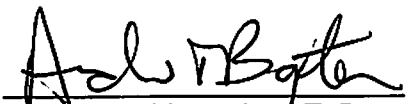
10. Based upon the above information, there is probable cause to conclude that PASSERO knowingly received child pornography using a means and facility of interstate and foreign commerce, and in and affecting such commerce (i.e., via the

internet), in violation of 18 U.S.C. §§ 2252A(a)(2)(A) & 2256(8)(A) (receipt of child pornography).


Christopher J. Rupp
HSI Special Agent

#4100
HSI-SA

Sworn to me this
11th of January 2018


The Honorable Andrew T. Baxter
United States Magistrate Judge